

## **EXHIBIT A**

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement” or “Settlement”) is made between and among plaintiff City Select Auto Sales, Inc. (“Plaintiff”), for itself and the Settlement Class (as defined below), on the one hand, and defendants BMW Bank of North America and BMW Financial Services NA, LLC (together, the “BMW Defendants” and together with Plaintiff, the “Parties”), on the other hand. The BMW Defendants, Class Counsel (as defined below), and Plaintiff hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court (as defined below) of a Final Approval Order (as defined below), all claims of Plaintiff and the Settlement Class Members (as defined below) in the action entitled City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al., U.S.D.C., District of New Jersey, Case No. 1:13-cv-04595-NLH-JS (the “Action”), shall be settled, compromised and released upon the terms and conditions contained herein.

### **I. RECITALS**

This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. The Action was filed on July 30, 2013, in the United States District Court for the District of New Jersey. Plaintiff alleges in the Action that the BMW Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”), by sending unsolicited facsimile advertisements without the recipients’ prior express invitation or permission and without a required opt-out notice.

B. The BMW Defendants deny all claims asserted in the Action and deny all allegations of wrongdoing and liability. The BMW Defendants desire to settle the Action on the terms set forth herein solely for the purpose of avoiding the burden, expense, risk and uncertainty of continuing these proceedings.

C. This Agreement resulted from and is the product of extensive good-faith arm’s-length negotiations. The Parties participated in private mediation before the Hon. James R.

Epstein (Ret.) (JAMS), as well as follow-up negotiations in documenting the Settlement, to reach a resolution of the Action.

D. Plaintiff and Class Counsel have investigated the facts and law underlying the claims asserted in the Action. Plaintiff and Class Counsel requested, and the BMW Defendants produced, documents regarding the claims alleged in Plaintiff's Class Action Complaint, and Class Counsel interrogated by interrogatory and deposed representatives of the BMW Defendants and Creditsmarts Corp. ("Creditsmarts"). Class Counsel also engaged in numerous discussions with the BMW Defendants regarding the claims.

E. As a result of these efforts and the mediation, the Parties entered into this Agreement, subject to preliminary approval and final approval by the Court as required by Rule 23 of the Federal Rules of Civil Procedure, to fully, finally and forever resolve, discharge and release all rights and claims of Plaintiff and the Settlement Class Members (as defined below) in exchange for a maximum settlement amount of \$3,765,000.

F. The Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims as set forth herein.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties agree to the Settlement, subject to approval by the Court, as follows:

**II. DEFINITIONS**

A. In addition to the terms defined elsewhere within this Agreement, the following defined terms apply throughout this Agreement and the attached exhibits:

1. “Administration Costs” refers to all costs of printing and providing notice to persons in the Settlement Class (including, but not limited to, costs for Direct Notice, the Settlement Website, and the Toll-Free Settlement Hotline), all costs of administering the Settlement (including, but not limited to, the cost of printing and mailing settlement payments, Claim Forms, opt-out requests, maintaining a designated post office box for receiving Claim Forms and the costs of processing opt-out requests), and the fees, expenses and all other costs of the Settlement Administrator.

2. “BMW Defendants’ Counsel” means Stroock & Stroock & Lavan LLP.

3. “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

4. “Claim Deadline” shall have the meaning set forth in Section F of this Agreement.

5. “Claim Form” or “Claim” means the claim form to be submitted by Settlement Class Members in order to receive a Settlement Award pursuant to Section F of this Agreement, subject to approval by the Court, substantially in the either the form attached hereto as Exhibit A-1 or A-2.

6. “Class Counsel” means Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C.

7. “Class Notice” or “Notice Program” means all types of notice that will be provided to the Settlement Class including the Mail Notice, Facsimile Notice, Website Notice, and any different or additional notice that might be ordered by the Court. A description of the contemplated Notice Program is provided in Section E of this Agreement.

8. “Court” means the United States District Court for the District of New Jersey.

9. “Creditsmarts Database” shall refer to the customer database produced by Creditsmarts in the Action.

10. “Effective Date” means the thirtieth (30th) day after the last of the following dates:

a. The Court has entered, without material change, the Final Approval Order, including the award of attorneys’ fees and costs;

b. The final disposition of any related appeals, and in the case of no appeal or review being filed, expiration of the applicable appellate period; and

c. The provision of the final list of approved claims by the Settlement Administrator.

11. “Facsimile Notice” means the notice that will be provided pursuant to Section E(1)(b) of this Agreement, subject to approval by the Court, substantially in either the form attached hereto as Exhibit B-1 or B-2.

12. “Final Approval Hearing” means the date of the hearing when the Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of fees, costs and expenses awarded to Class Counsel and the amount of the service award to Plaintiff.

13. “Final Approval Order” means the order and judgment that the Court enters upon finally approving the Settlement in connection with the Final Approval Hearing, the proposed form of which is attached hereto as Exhibit C.

14. “Mail Notice” means the notice that will be provided pursuant to Section E(1)(a) of this Agreement, subject to approval by the Court, substantially in either the form attached hereto as Exhibit D-1 or D-2.

15. “Notice Deadline” shall have the meaning set forth in Section E of this Agreement.

16. “Opt-Out and Objection Deadline” shall have the meaning set forth in Section K of this Agreement.

17. “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement, the proposed forms of which are attached hereto as Exhibit E-1 or E-2. “Preliminary Approval” means the date that the Court enters, without material change, the Preliminary Approval Order.

18. “Released Claims” shall have the meaning set forth in Section H of this Agreement. The “Releases” means all of the releases contained in Section H of this Agreement.

19. “Released Parties” means those persons and entities released as set forth in Section H of this Agreement.

20. “Settlement Administrator” means Class-settlement.com, which shall be responsible for providing the Class Notice as well as services related to administration of the Settlement.

21. “Settlement Award” means a cash payment that may be available to eligible Settlement Class Members pursuant to Section F of this Agreement.

22. “Settlement Class” means: “All persons in the United States that were sent a facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, transmitted by Creditsmarts on or after September 1, 2012, through January 1, 2013” (the “Class Period”). Excluded from the Settlement Class are: (1) the BMW Defendants, Creditsmarts, any parent, subsidiary, affiliate, or controlled person of the BMW Defendants or Creditsmarts, as well as their attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons; (2) the named counsel in the Action and any employee of their office or firm; (3) the district and magistrate judges assigned to this Action, including their courtroom staff; (4) anyone whose claim against the Released Parties has been resolved through prior litigation; and (5) all persons who timely and validly request exclusion from the Settlement Class.

23. “Settlement Class Member” means any person in the Settlement Class who does not request exclusion from the Settlement.

24. “Settlement Website” means the website dedicated to the Settlement as described in Section E of this Agreement.

25. “Toll-Free Settlement Hotline” shall have the meaning set forth in Section E(2) of this Agreement.

26. “Website Notice” means the website notice provided pursuant to Section E(1)(c) of this Agreement, substantially in the form attached hereto as Exhibit F. The Website Notice will be posted on the Settlement Website.

B. Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached exhibits.

### **III. TERMS OF SETTLEMENT**

A. Conditional Certification of the Settlement Class. Solely for the purposes of settlement, providing Class Notice and implementing this Agreement, the Parties agree to conditional certification of the Settlement Class for settlement purposes only. If the Settlement is not finalized or finally approved by the Court for any reason whatsoever, the certification of the Settlement Class is voidable by either Party, the Action will return to its status as it existed prior to this Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated class certification proceedings, in response to any motion seeking to compel arbitration or otherwise asserted in any other aspect of the Action or in any other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, the BMW Defendants, any person in the proposed Settlement Class or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

B. Preliminary Approval.

1. Preliminary Approval Motion. No later than thirty (30) days following complete execution of this Agreement, Plaintiff will move the Court for entry of the Preliminary Approval Order. The BMW Defendants reserve the right to object to the Preliminary Approval

Motion on the limited basis that any and all claim forms must include Substitute W-9 Form fields. The proposed settlement documents including/addressing and not including/addressing the Substitute W-9 Form fields are attached hereto as form 1 and form 2 of each exhibit, respectively.

2. Stay/Bar of Proceedings. All proceedings in the Action shall be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Settlement should be granted final approval, the Parties agree not to pursue any claims or defenses otherwise available to them. The Settlement will be conditioned upon the entry of such an injunction in both the Preliminary Approval Order and Final Approval Order.

C. Settlement Consideration.

1. The Settlement Amount. As full and complete consideration for the settlement of all claims of Plaintiff and the Settlement Class Members described herein, the BMW Defendants will pay up to a maximum settlement amount of \$3,765,000 (the “Settlement Amount”), which is comprised of: (i) valid claims submitted by Settlement Class Members in the amount of \$145 per valid claim on a claims-made basis and subject to *pro rata* reduction as addressed in Section F(2); (ii) a service award to Plaintiff of \$15,000, subject to Court approval, as addressed in Section J; (iii) an award of attorneys’ fees to Class Counsel of not more than \$1,250,000 (33.2% of the Settlement Amount), subject to Court approval, as addressed in Section I; and (iv) payment of up to \$80,000 for all costs of printing and providing notice to persons in the Settlement Class (including, but not limited to, costs for Direct Notice, the Settlement Website, and the Toll-Free Settlement Hotline), all costs of administering the Settlement (including, but not limited to, the cost of printing and mailing settlement payments, processing Claim Forms, processing opt-out requests, maintaining a designated post office box for receiving Claim Forms and the costs of processing opt-out requests), the fees, expenses and all other costs of the Settlement Administrator, and for Plaintiff’s litigation expenses incurred in

the action (“Plaintiff’s Expenses”). The BMW Defendants shall not, under any circumstances, be obligated to pay any more than \$3,765,000 in connection with the Settlement.

D. Settlement Administration. The Settlement Administrator shall administer the Settlement distribution process. Administration Costs and Plaintiff’s Expenses to be paid by the BMW Defendants shall not exceed \$80,000. In the event that Administration Costs and Plaintiff’s Expenses exceed the \$80,000 cap, those costs shall be paid by Class Counsel. Class Counsel shall provide the Settlement Administrator, on a confidential basis, with the following information regarding potential Settlement Class Members based on the information contained in the Creditsmarts Database: (1) the dealership name, (2) its mailing address, and (3) its facsimile number (the “Class List”). The Class List shall be comprised of entities in the Creditsmarts Database with a “CreateDateTime” of December 27, 2012, or earlier, and excluding entities that either did not have a valid facsimile number to which advertisements could have been faxed or for which there was an “out of business” or “do not fax” notation. The Settlement Administrator shall maintain the Class List in a secure manner and shall not share the Class List with any other person or entity. Class Counsel will provide the Class List to the Settlement Administrator and the BMW Defendants within three (3) days following Preliminary Approval.

E. Settlement Class Notice Program. The Settlement Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, by the Notice Deadline, which shall be the date fourteen (14) days from entry of the Preliminary Approval Order:

1. Direct Notice. The Direct Notice will include a Claim Form, which may be electronically submitted or faxed or mailed back to submit a claim for a Settlement Award. The Direct Notice will also include summary information pursuant to FRCP 23(c)(2)(B) on how to obtain, and submit, the Claim Form and also refer to the Settlement Website, which, as discussed below, will include information regarding the Settlement and also provide for online submission of the Claim Form and opt-out requests.

a. Mail Notice. Notice shall be sent by first class mail to all Settlement Class Members using the mailing address reflected in Creditsmarts Database, in the form attached hereto as Exhibit D-1 or D-2. A National Change of Address update shall be performed before mailing. All costs of updating addresses will be considered Administration Costs.

b. Facsimile Notice. Notice shall be sent by facsimile to all Settlement Class Members using the facsimile number contained in the Creditsmarts Database, in the form attached hereto as Exhibit B-1 or B-2. Facsimiles shall include the URL of the Settlement Website and the Toll-Free Settlement Hotline. The Settlement Administrator shall maintain a record of successfully transmitted Facsimile Notices.

c. Website Notice. In addition to the foregoing, the Settlement Administrator will establish and maintain the Settlement Website, on which will be posted the Mail Notice, the Facsimile Notice, the Claim Form, the operative Complaint, a copy of this Agreement, the Preliminary Approval Order, the Website Notice (in the form attached hereto as Exhibit F), and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms. The Settlement Administrator shall secure a URL for the Settlement Website selected by the BMW Defendants and subject to approval by Class Counsel. The URL will not include “up2drive,” “BMW Bank of North America,” “BMW Bank,” “BMW Financial Services NA, LLC,” “BMWFS,” “BMW of North America, LLC” or “BMWNA” and the Settlement Website will not include any of the BMW Defendants’ or up2drive’s logos or trademarks. The BMW Defendants will not display ads or otherwise make any reference to the Settlement on any of their or their affiliates’ websites. The Settlement Website shall include functionality for the submission of questions, to which the Settlement Administrator will either respond or direct to Class Counsel. The Settlement Website URL shall be terminated and removed from the internet within ten (10) days after operation of the Settlement Website ceases. Ownership of the URL shall be transferred to the BMW Defendants,

but the BMW Defendants shall not use the URL for any purpose and shall not renew the URL upon its expiration.

2. Toll-Free Settlement Hotline. The Settlement Administrator will establish and maintain an automated toll-free telephone line (which shall not have live operators) for persons in the Settlement Class to call with questions and to leave messages regarding Settlement-related inquiries (the Settlement Administrator shall not give, and shall not be expected to give, legal advice). The Settlement Administrator will promptly return messages and will refer individuals who seek legal advice to Class Counsel.

3. CAFA Notice. The BMW Defendants shall be responsible for timely compliance with all CAFA Notice requirements.

F. Settlement Awards.

1. Awards. Except as set forth herein, Settlement Class Members will be entitled to make a claim for a Settlement Award, which will be payable as a cash award, as described below. Settlement Class Members will be entitled to make only one claim (“Claim”) per telephone facsimile number in the Class List regardless of the number of facsimiles the Settlement Class Member received.

2. Claims-Made Basis. Settlement Awards shall be made to eligible Settlement Class Members on a claims-made basis. The Settlement Administrator will provide the BMW Defendants with a list of valid and timely Claims. The amount of each Settlement Award will be \$145 per facsimile number on the Class List for each valid and timely Claim, subject to a *pro rata* reduction if the cumulative value of claims would otherwise cause total payments related to the Settlement to exceed the Settlement Amount.

3. Conditions for Claiming Settlement Awards. To make a claim for a Settlement Award, Settlement Class Members must submit a valid and timely Claim Form, attached as Exhibit A1 or A2, within one hundred twenty (120) days of the Notice Deadline (the “Claim Deadline”). Only one valid Claim Form will be honored per Settlement Class Member,

regardless of the number of facsimiles the Settlement Class Member received, although a Settlement Class Member may have multiple Claims if they have multiple facsimile numbers in the Class List. The BMW Defendants shall have the right to review and research the submitted Claim Forms and to suggest denial of claims if the BMW Defendants have a good faith belief that such claims are improper or fraudulent. Any suggestion of denial of claims shall be provided to Class Counsel and the Settlement Administrator in writing. If the Parties cannot agree upon which Claims should be denied, then they shall submit the issue to the Court for determination.

4. Obligations of Settlement Class Members Unaffected by Settlement.

Subject to the Releases set forth in Section H, the Settlement shall not affect any debts allegedly owed by Plaintiff and/or Settlement Class Members to the BMW Defendants or any of their affiliates.

G. Distribution of Settlement Awards.

1. Settlement Award Payments. Settlement Awards shall be mailed by the Settlement Administrator within seven (7) days after the Effective Date. The Settlement Administrator shall mail, by first-class mail, a check to each eligible Settlement Class Member receiving a Settlement Award. The Settlement Administrator will perform skip tracing and re-mailing, as necessary; all costs of such work will be considered Administration Costs. Checks will be valid for one hundred eighty (180) days after the date on the check (the checks shall identify this expiration date on their face). Any Settlement Class Member who fails to negotiate the Settlement Award within the 180-day period forever waives and releases his or her claims for payment of the amount represented by the Settlement Award check.

2. Second Distribution. The amounts of any Settlement Award checks that remain uncashed more than one hundred eighty (180) days after the date on the check will be redistributed on a *pro rata* basis to eligible Settlement Class Members who cashed their first check, where the residual amount of uncashed checks is sufficient to pay each eligible recipient

\$10 (the “Second Distribution”). Settlement Class Members who do not cash their initial checks shall not be eligible for any Second Distribution. To the extent the residual amount of uncashed checks is insufficient for the Second Distribution, or any residual amount remains after the Second Distribution, the residual amount shall be issued as a *cy pres* distribution to the Legal Services of New Jersey, subject to the approval of the Court. The Second Distribution shall be made thirty (30) days after the last day for checks to be cashed as set forth in Section G(1) above. Checks distributed pursuant to the Second Distribution shall be mailed, by first-class mail, by the Settlement Administrator and will be valid for one hundred eighty (180) days after the date on the check.

H. Releases. As of the Effective Date, Plaintiff and the Settlement Class Members provide the following releases:

Plaintiff and each and all Settlement Class Members, on behalf of themselves and their present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, and/or predecessors in interest and all of the aforementioned's' respective officers, directors, employees, attorneys, shareholders, agents, vendors and assigns and, in the case of individual Settlement Class Members, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, household members, and any persons acting on their behalf, will be deemed to have fully released and forever discharged up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, BMW of North America, and Creditsmarts Corp. and each and all of their present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, vendors and assigns (together, the

“Released Parties”) from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by Constitution, statute, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory as of the date of Final Approval that arise out of or are related to the actual or alleged transmission by BMW Bank of North America, BMW Financial Services NA, LLC, BMW of North America, up2drive, Creditsmarts Corp., or their current or prior representatives, agents or affiliates, of facsimiles advertising the goods or services of BMW Bank of North America, BMW Financial Services NA, LLC, BMW of North America, and/or up2drive, including, but not limited to, claims under or for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any other state or federal statutory or analogous common law claim (including, but not limited to invasion of privacy and conversion) (the “Released Claims”) during the Class Period.

Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement and the releases contained therein become effective. This Paragraph constitutes a waiver of, without limitation as to any other applicable law, Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff and the Settlement Class Members understand and acknowledge the significance of the waiver of California Civil Code Section 1542 and/or any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiff and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the settlement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

I. Attorneys' Fees and Costs. Plaintiff shall move the Court for an award of attorneys' fees (of not more than \$1,250,000), and Plaintiff's Expenses (of not more than the difference between \$80,000 and the Administration Costs), to be paid to Class Counsel by the BMW Defendants. Class Counsel will receive payment of those fees and costs awarded by the Court by check or wire to Bock & Hatch, LLC Client Trust Account within seven (7) days after the last of the following dates: (i) the entry of the Final Approval Order, including the award of attorneys' fees and costs; (ii) the final disposition of any related appeals, and in the case of no appeal or review being filed, expiration of the applicable appellate period. Court approval of attorneys' fees and costs, or their amount, will not be a condition of the Settlement. In addition, no interest will accrue on such amounts at any time.

J. Service Award. Plaintiff shall move the Court for a service award to be paid to Plaintiff by the BMW Defendants. The BMW Defendants will not object to, or appeal, a service award to Plaintiff not to exceed \$15,000, subject to Court approval. Such service award shall be paid at the time the attorneys' fees and costs payments to Class Counsel are due. Court approval of the service award, or the amount, will not be a condition of the Settlement. In addition, no interest will accrue on such amounts at any time.

K. Opt-Out Right/Termination.

1. Opt-Out Requirements. A member of the Settlement Class may request exclusion from the Settlement by submitting an opt-out request by sending a written request to the Settlement Administrator at the address designated in the Class Notice no later than sixty (60) days of the Notice Deadline (the "Opt-Out and Objection Deadline"). Exclusion requests must include: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number(s) owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) the Settlement Class Member's signature. Exclusion requests must be signed by a representative of the Settlement Class Member who is authorized to request the exclusion. No request for exclusion will be valid unless timely submitted and all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class. The Final Approval Order will attach a declaration by the Settlement Administrator naming each Settlement Class Member that validly opted out and that declaration shall be filed under seal, if possible. All Settlement Class Members who do not opt-out in accordance with the terms set forth herein will be bound by all

determinations and judgments in the Action. In the event a member of the Settlement Class submits both an exclusion request and a Claim Form, the Claim Form will control.

L. Objections to The Settlement.

1. Right to Object. Any Settlement Class Member who has not requested exclusion may appear at the Final Approval Hearing to object to the proposed Settlement and/or to the application of Class Counsel for an award of attorneys' fees and costs and/or the service award, but only if the Settlement Class Member has first filed a written objection with the Court, in accordance with the requirements set forth below, by the Opt-Out and Objection Deadline. Any Settlement Class Member who does not provide a timely, written objection in the manner described in this Section shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, or the award of any attorneys' fees and costs and/or service award.

2. Objection Requirements. To have its objection considered, a Settlement Class Member must make any objection in writing and file it with the Court by the Opt-Out and Objection Deadline. Further, any Settlement Class Member who wishes the Court to consider its objection must appear at the Final Approval Hearing. In addition to filing it with the Court, the objection must also be mailed to each of the following, postmarked no later than the last day to file the objection: (i) Class Counsel – Bock, Hatch, Lewis & Oppenheim, LLC, 134 N. La Salle St., Ste. 1000, Chicago, Illinois 60602; and (ii) the BMW Defendants' Counsel – Arjun P. Rao, Stroock & Stroock & Lavan LLP, 2029 Century Park East, Los Angeles, California 90067. Any objection must: (i) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member; (ii) include a statement of such Settlement Class Member's specific objections; (iii) state the grounds for objection, as well as identify any documents which such objector desires the Court to consider; and (iv) list all class actions in which the objector or its counsel have filed any objection to settlement.

M. Confirmatory Discovery. During the litigation, Class Counsel deposed representatives of the BMW Defendants and Creditsmarts. No confirmatory discovery is contemplated or permitted by this Agreement.

N. Final Approval. Following completion of the Notice Program and expiration of the Opt-Out and Objection Period, Plaintiff shall promptly request that the Court enter the Final Approval Order.

O. Termination by the BMW Defendants. The BMW Defendants will have the right to terminate the Settlement, in their sole discretion, if 1% of the Settlement Class (167 Settlement Class Members) opt out of the Settlement. None of the Released Parties shall encourage any person to submit an opt-out request. In the event that the Settlement is terminated pursuant to this Paragraph, the Parties will be returned to the *status quo ante* as if no Settlement had been negotiated or entered into, except that the BMW Defendants are responsible for all Administration Costs incurred.

P. Dismissal. Upon entry of the Final Approval Order, Plaintiff shall take any additional steps necessary to effectuate the dismissal of the Action as provided in the Final Approval Order.

Q. No Admissions. The BMW Defendants expressly disclaim and deny any wrongdoing or liability whatsoever. This Settlement, and any and all negotiations, statements, documents and/or proceedings in connection with this Settlement, shall not be construed or deemed to be evidence of an admission or concession by the BMW Defendants of any liability or wrongdoing by the BMW Defendants or any of its affiliates, agents, representatives, vendors or any other person or entity acting on its behalf, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief.

R. No Publicity Beyond Notice Procedures. Unless the Parties agree otherwise in writing, Class Counsel and/or Plaintiff agree not to issue press releases or initiate any public

statements regarding the Settlement, with the exception of the Notices. No party shall make any statements of any kind to any third party regarding the Settlement prior to filing a motion for preliminary approval with the Court, with the exception of the Settlement Administrator. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement and Class Counsel will not be prohibited from communicating with any person in the Settlement Class regarding the Action or the Settlement. In all communications, all Parties must comply with the terms of the Stipulated Protective Order entered in the Action and shall not disclose information that is not a part of the public record. All Parties shall refrain from disparaging any of the other parties or counsel publicly or taking any public action designed or reasonably foreseeable to cause harm to the public perception of any of the Released Parties or counsel regarding any issue related in any way to the Action or the Settlement.

#### **IV. GENERAL PROVISIONS**

A. Settlement Conditioned Upon Approval. The Settlement is conditioned upon entry of the Preliminary Approval Order and Final Approval Order without material modification by the Court. In the event of failure to obtain any of the required provisions of such orders, including, but not limited to, the denial of any motion seeking preliminary or final approval, the Parties will return, without prejudice, to the *status quo ante* (except that the BMW Defendants will be responsible for all Administration Costs incurred) as if no Settlement had been negotiated or entered into and this Settlement Agreement, the Settlement and their existence shall be inadmissible to establish any fact relevant to any alleged liability of the Released Parties for the matters alleged in the Action or for any other purpose.

B. Evidentiary Preclusion. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (including, but not limited to, this Settlement Agreement): (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any released claim, or of any wrongdoing or liability of the Released

Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency, arbitration or alternative dispute mechanism, or other tribunal. In addition, neither the fact of, nor any documents relating to, the BMW Defendants' withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence for any purpose other than in a dispute over whether a withdrawal from the Settlement was wrongful. The Released Parties may file the Settlement Agreement and/or the judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or any other defense or counterclaim.

C. Destruction of Confidential Documents. It is agreed that, within thirty (30) days after the Effective Date, the originals and all copies of all confidential or highly confidential documents and/or information subject to all confidentiality agreements, including the discovery confidentiality order and the stipulated revision to discovery confidentiality order, in the Action shall be returned to the producing party or destroyed. Nothing in the Agreement shall require attorney work-product or pleading files to be returned or destroyed.

D. No Construction against Drafter. This Settlement Agreement will be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter will not apply.

E. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements or writings regarding the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives and approved by the Court. The provisions of the Agreement may be waived only in a writing executed by the waiving party. The waiver by one Party of any breach of this

Agreement by any other Party shall not be deemed a waiver, by that Party or by any other Party, of any other prior or subsequent breach of this Agreement.

F. Authority. Plaintiff and the BMW Defendants represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and the BMW Defendants to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she has done so freely and he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

G. No Assignment. No party to this Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands or cause or causes of action disposed of by this Agreement.

H. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases. Each Party to this Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Agreement.

I. Agreement Binding on Successors in Interest. This Agreement is binding on and shall inure to the benefit of the respective heirs, successors and assigns of the Parties.

J. Future Changes In Laws Or Regulations. The Parties agree that any change in law shall not provide a basis for any attempt to alter, modify or invalidate this agreement.

K. Execution In Counterparts. The Parties may execute this Agreement in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

L. Notices. All notices to counsel provided for herein shall be sent by e-mail with a hard copy sent by overnight mail to:

As to Plaintiff and the Settlement Class:

BOCK, HATCH, LEWIS & OPPENHEIM, LLC  
Phillip A. Bock  
phil@classlawyers.com  
134 N. La Salle Street, Suite 1000  
Chicago, Illinois 60602

As to the BMW Defendants:

STROOCK & STROOCK & LAVAN LLP  
Arjun P. Rao  
arao@stroock.com  
2029 Century Park East  
Los Angeles, California 90067

M. Retention of Jurisdiction. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

N. Choice of Law. The Parties agree that this Agreement shall be governed by the laws of the State of New Jersey, regardless of its choice of law rules.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date set forth below:

**CITY SELECT AUTO SALES, INC.**

By: Lori Helleman

Its: President & Director

Dated: January 28, 2019

**BMW BANK OF NORTH AMERICA**

By: Wendy E. Stoye

Its: Associate Secretary

Dated: January 29, 2019

**BMW FINANCIAL SERVICES NA, LLC**

By: Wendy E. Stoye

Its: Associate General Counsel

Dated: January 29, 2019

**APPROVED AS TO FORM AND  
CONTENT:**

**CLASS COUNSEL:**

**BOCK, HATCH, LEWIS & OPPENHEIM, LLC**

By: PAB

Phillip A. Bock

Dated: Jan 29, 2019

**APPROVED AS TO FORM:**

**COUNSEL FOR BMW BANK OF NORTH  
AMERICA AND BMW FINANCIAL  
SERVICES NA, LLC:**

STROOCK & STROOCK & LAVAN LLP

By:

Dated: Jan. 29, 2019

  
Arjun P. Rao

# **EXHIBIT A-1**

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
**United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS**

**Settlement Administrator**

PO Box [REDACTED]  
[REDACTED]

Toll Free Number: **X-XXX-XXX-XXXX**

Website: **www.[REDACTED].com**

**CLAIM FORM**

**YOUR CLAIM FORM MUST BE RETURNED BY MONTH XX, 2019.**

*You do not need to possess or remember receiving any fax from Defendants, but you must complete all **FOUR** of the following steps to claim a share of the Settlement Amount:*

**1. You must provide your contact information.**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

List All Fax Numbers Belonging to You between September 1, 2012 and January 1, 2013:

---

**2. You must certify your Taxpayer Identification Number.**

Please provide the Taxpayer Identification Number (“TIN”) associated with the owner of the fax number identified in No. 1 above. If the owner of the fax number is a business or other entity, then please enter its Employer Identification Number and do not provide a Social Security number. If the owner of the fax number is an individual, then please enter his or her Social Security Number and do not provide an Employer Identification Number. Don’t worry. The Court has ordered the Settlement Administrator to protect the confidentiality of your Social Security Number or Employer Identification Number.

Employer Identification Number						

OR

Social Security Number						

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person.

---

Signature

Date

**3. You must verify ownership or use of the fax number(s) you identified above.**

The fax number(s) identified in No. 1 above or attached to this Proof of Claim was/were mine or my company's during the period between September 1, 2012, and January 1, 2013.

---

Signature

Date

4. **You Must Return this Claim Form by [120 days] , 2019:**

- (a) Fax this Claim Form to: **X-XXX-XXX-XXXX**  
**OR**
- (b) Mail this Claim Form to: **<address>**  
**OR**
- (c) Submit this Claim Form electronically at: **<website>**

## **EXHIBIT A-2**

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS

Settlement Administrator

PO Box [REDACTED]  
[REDACTED]

Toll Free Number: **X-XXX-XXX-XXXX**

Website: **www.[REDACTED].com**

**CLAIM FORM**

**YOUR CLAIM FORM MUST BE RETURNED BY MONTH XX, 2019.**

*You do not need to possess or remember receiving any fax from Defendants, but you must complete all **THREE** of the following steps to claim a share of the Settlement Amount:*

**1. You must provide your contact information.**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

List All Fax Numbers Belonging to You between September 1, 2012 and January 1, 2013:

---

**2. You must verify ownership or use of the fax number(s) you identified above.**

The fax number(s) identified in No. 1 above or attached to this Proof of Claim was/were mine or my company's during the period between September 1, 2012, and January 1, 2013.

Signature

Date

**3. You Must Return this Claim Form by [120 days] , 2019:**

(a) Fax this Claim Form to: **X-XXX-XXX-XXXX**

**OR**

(b) Mail this Claim Form to: **<address>**

**OR**

(c) Submit this Claim Form electronically at: **<website>**

## **EXHIBIT B-1**

**This is a notice of a lawsuit settlement.**

**It should be read by a person who makes legal decisions for your home or business.**

**You may benefit from this. Please read it carefully.**

**You must submit a Proof of Claim (attached) to receive a settlement check.**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,  
Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC,  
CREDITSMARTS CORP., and JOHN DOES 1-12,  
Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

**You may be entitled to money under a class action settlement alleging unsolicited advertisements were sent by facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, on or after September 1, 2012, through January 1, 2013. The Court ordered us to send this notice to your fax number because it was found in a database to which the faxes at issue were sent and, therefore, you might be a member of the Settlement Class. If you received this Notice by mail, then your name and address was in the database. A person who does not exclude him or herself is a “Settlement Class Member.”**

**The purpose of this Notice is to inform the Settlement Class of the terms of the settlement and important deadlines relating to the settlement, as summarized below and described more fully on the Settlement Website: <website>**

Plaintiff City Select Auto Sales, Inc. (“Plaintiff”) claims that BMW Bank of North America, BMW Financial Services NA, LLC (together the “BMW Defendants”), and Creditsmarts Corp. violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending unsolicited advertisements by facsimile. The BMW Defendants deny these allegations and deny any claim of wrongdoing. The Court has not ruled on the merits of Plaintiff’s claims or the BMW Defendants’ defenses. The parties have agreed to settle. By entering into the settlement, the BMW Defendants have not conceded the truth or validity of any of the claims.

**REPRESENTATION OF THE SETTLEMENT CLASS**

Plaintiff is the “Class Representative.” The Court appointed Plaintiff’s attorneys, Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C as “Class Counsel.”

**TERMS OF THE SETTLEMENT**

The BMW Defendants will pay up to \$3,765,000 (the “Settlement Amount”) to cover all amounts related to the settlement, including settlement awards to Settlement Class Members, attorneys’ fees and costs to Class Counsel, a service award to Plaintiff, and the costs of notice and administration of the settlement. **A Settlement Class Member who submits a valid claim form (“Claim Form”) will receive a cash award of the lesser of \$145 per fax number on the class list or a pro rata share of the Settlement Amount remaining after the payments for fees, costs, service award, and notice and administration.** Class Counsel will ask the Court for 33.2% of the Settlement Amount as fees and additional money to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement. The attorneys have litigated this matter on a contingency basis. You will not have to pay any money to Class Counsel. You may enter an appearance through an attorney to be paid at your own cost if you desire.

**DEADLINES UNDER THE SETTLEMENT**

- Submit a Claim Form and W-9 Form. In order to receive benefits under the settlement, you must submit a valid Claim Form no later than Month XX, 20XX.** Claim Forms may be obtained on the Settlement Website, <website>, or by calling the Toll-Free Settlement Hotline, X-XXX-XXX-XXXX. Claim Forms must be submitted by

fax, mail, or through the Settlement Website. Settlement Class Members may only submit one claim per facsimile telephone number, regardless of the number of facsimiles the Settlement Class Member received. More details can be found on the Settlement Website.

- **Exclude Yourself.** To exclude yourself from the settlement, submit a written exclusion request postmarked on or before Month XX, 20XX to the Claims Administrator at <address>. To be valid, the written exclusion request must contain: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number(s) owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) the Settlement Class Member's signature. Exclusion requests must be signed by a representative of the Settlement Class Member who is authorized to request the exclusion. If you do not submit a valid and timely exclusion request, you will be bound by the terms of the settlement and you will give up your right to sue regarding unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Object.** To object to or comment on the settlement, you must file an objection with the Court by Month XX, 20XX. You must also serve copies of your objection on Class Counsel and Defendants' attorneys (at the addresses above), postmarked by the same date. Your objection must include your name, fax number, street address, all attorneys who assisted you in the preparation and filing of your objection, a list of all other class action cases in which you or your counsel have filed objections to settlements, and a statement of the reasons why you believe the Court should find that the proposed settlement is not fair, reasonable, and adequate. It is not enough to state only that you object; you must state the reasons why you believe the settlement should not be approved. Additionally, you must appear at the final fairness hearing to articulate your position why the settlement should not be approved. Even if you submit a valid and timely objection, to benefit from this settlement you must complete a Claim Form.
- **Do Nothing.** If you do nothing, you will not receive any monetary award and you will lose the right to sue regarding any unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Final Approval Hearing.** The Final Approval Hearing will take place on Month XX, 20XX at XX:00 a.m./p.m. in Courtroom 3A at the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New Jersey 08101.

#### INQUIRIES

Complete details about your rights and options are available on the Settlement Website, <website>. If you have other questions, you may call the Toll-Free Settlement Hotline, X-XXX-XXX-XXXX. You may also call attorney Phillip A. Bock, one of the lawyers for the Class, at 312-658-5501.

Please do not contact the Clerk of the Court, the Judge, or the Judge's staff, the BMW Defendants, or the BMW Defendants' Counsel, because they cannot answer your questions or give you advice about this settlement.

BY ORDER OF THE COURT  
HONORABLE NOEL HILLMAN

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
**United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS**

**Settlement Administrator**

PO Box [REDACTED]  
[REDACTED]

**Toll Free Number: X-XXX-XXX-XXXX**

**Website: www.[REDACTED].com**

**CLAIM FORM**

**YOUR CLAIM FORM MUST BE RETURNED BY MONTH XX, 20XX, 2019.**

Fax Number: <populated by administrator>

*You do not need to possess or remember receiving any fax from Defendants, but you must complete all **FOUR** of the following steps to claim a settlement award:*

**1. You must provide your contact information.**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

List All Fax Numbers Belonging to You Between September 1, 2012 and January 1, 2013:

---

**2. You must certify your Taxpayer Identification Number.**

Please provide the Taxpayer Identification Number (“TIN”) associated with the owner of the fax number identified in No. 1 above. If the owner of the fax number is a business or other entity, then please enter its Employer Identification Number and do not provide a Social Security number. If the owner of the fax number is an individual, then please enter his or her Social Security Number and do not provide an Employer Identification Number. Don’t worry. The Court has ordered the Settlement Administrator to protect the confidentiality of your Social Security Number or Employer Identification Number.

Employer Identification Number						

OR

Social Security Number						

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person.

---

Signature

Date

**3. You must verify ownership or use of the fax number(s) you identified above.**

The fax number(s) identified in No. 1 above or attached to this Proof of Claim was/were mine or my company's during the period between September 1, 2012, through January 1, 2013.

---

Signature

Date

4. **You Must Return this Claim Form by [120 days] , 2019:**

- (a) Fax this Claim Form to: **X-XXX-XXX-XXXX**  
***OR***
- (b) Mail this Claim Form to: **<address>**  
***OR***
- (c) Submit this Claim Form electronically at: **<website>**

## **EXHIBIT B-2**

**This is a notice of a lawsuit settlement.**

**It should be read by a person who makes legal decisions for your home or business.**

**You may benefit from this. Please read it carefully.**

**You must submit a Proof of Claim (attached) to receive a settlement check.**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,  
Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC,  
CREDITSMARTS CORP., and JOHN DOES 1-12,  
Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

**You may be entitled to money under a class action settlement alleging unsolicited advertisements were sent by facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, on or after September 1, 2012, through January 1, 2013. The Court ordered us to send this notice to your fax number because it was found in a database to which the faxes at issue were sent and, therefore, you might be a member of the Settlement Class. If you received this Notice by mail, then your name and address was in the database. A person who does not exclude him or herself is a “Settlement Class Member.”**

**The purpose of this Notice is to inform the Settlement Class of the terms of the settlement and important deadlines relating to the settlement, as summarized below and described more fully on the Settlement Website: <website>**

Plaintiff City Select Auto Sales, Inc. (“Plaintiff”) claims that BMW Bank of North America, BMW Financial Services NA, LLC (together the “BMW Defendants”), and Creditsmarts Corp. violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending unsolicited advertisements by facsimile. The BMW Defendants deny these allegations and deny any claim of wrongdoing. The Court has not ruled on the merits of Plaintiff’s claims or the BMW Defendants’ defenses. The parties have agreed to settle. By entering into the settlement, the BMW Defendants have not conceded the truth or validity of any of the claims.

**REPRESENTATION OF THE SETTLEMENT CLASS**

Plaintiff is the “Class Representative.” The Court appointed Plaintiff’s attorneys, Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C as “Class Counsel.”

**TERMS OF THE SETTLEMENT**

The BMW Defendants will pay up to \$3,765,000 (the “Settlement Amount”) to cover all amounts related to the settlement, including settlement awards to Settlement Class Members, attorneys’ fees and costs to Class Counsel, a service award to Plaintiff, and the costs of notice and administration of the settlement. **A Settlement Class Member who submits a valid claim form (“Claim Form”) will receive a cash award of the lesser of \$145 per fax number on the class list or a pro rata share of the Settlement Amount remaining after the payments for fees, costs, service award, and notice and administration.** Class Counsel will ask the Court for 33.2% of the Settlement Amount as fees and additional money to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement. The attorneys have litigated this matter on a contingency basis. You will not have to pay any money to Class Counsel. You may enter an appearance through an attorney to be paid at your own cost if you desire.

**DEADLINES UNDER THE SETTLEMENT**

- Submit a Claim Form. In order to receive benefits under the settlement, you must submit a valid Claim Form no later than Month XX, 20XX.** Claim Forms may be obtained on the Settlement Website, <website>, or by calling the Toll-Free Settlement Hotline, **X-XXX-XXX-XXXX**. Claim Forms must be submitted by fax, mail, or through the

Settlement Website. Settlement Class Members may only submit one claim per facsimile telephone number, regardless of the number of facsimiles the Settlement Class Member received. More details can be found on the Settlement Website.

- **Exclude Yourself.** To exclude yourself from the settlement, submit a written exclusion request postmarked on or before Month XX, 20XX to the Claims Administrator at <address>. To be valid, the written exclusion request must contain: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number(s) owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) the Settlement Class Member's signature. Exclusion requests must be signed by a representative of the Settlement Class Member who is authorized to request the exclusion. If you do not submit a valid and timely exclusion request, you will be bound by the terms of the settlement and you will give up your right to sue regarding unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Object.** To object to or comment on the settlement, you must file an objection with the Court by Month XX, 20XX. You must also serve copies of your objection on Class Counsel and Defendants' attorneys (at the addresses above), postmarked by the same date. Your objection must include your name, fax number, street address, all attorneys who assisted you in the preparation and filing of your objection, a list of all other class action cases in which you or your counsel have filed objections to settlements, and a statement of the reasons why you believe the Court should find that the proposed settlement is not fair, reasonable, and adequate. It is not enough to state only that you object; you must state the reasons why you believe the settlement should not be approved. Additionally, you must appear at the final fairness hearing to articulate your position why the settlement should not be approved. Even if you submit a valid and timely objection, to benefit from this settlement you must complete a Claim Form.
- **Do Nothing.** If you do nothing, you will not receive any monetary award and you will lose the right to sue regarding any unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Final Approval Hearing.** The Final Approval Hearing will take place on Month XX, 20XX at XX:00 a.m./p.m. in Courtroom 3A at the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New Jersey 08101.

#### INQUIRIES

Complete details about your rights and options are available on the Settlement Website, <website>. If you have other questions, you may call the Toll-Free Settlement Hotline, X-XXX-XXX-XXXX. You may also call attorney Phillip A. Bock, one of the lawyers for the Class, at 312-658-5501.

Please do not contact the Clerk of the Court, the Judge, or the Judge's staff, the BMW Defendants, or the BMW Defendants' Counsel, because they cannot answer your questions or give you advice about this settlement.

BY ORDER OF THE COURT  
HONORABLE NOEL HILLMAN

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
**United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS**

**Settlement Administrator**

PO Box [REDACTED]  
[REDACTED]

**Toll Free Number: X-XXX-XXX-XXXX**

**Website: www.[REDACTED].com**

**CLAIM FORM**

**YOUR CLAIM FORM MUST BE RETURNED BY MONTH XX, 20XX, 2019.**

Fax Number: <populated by administrator>

*You do not need to possess or remember receiving any fax from Defendants, but you must complete all THREE of the following steps to claim a settlement award:*

**1. You must provide your contact information.**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

List All Fax Numbers Belonging to You Between September 1, 2012 and January 1, 2013:

---

**2. You must verify ownership or use of the fax number(s) you identified above.**

The fax number(s) identified in No. 1 above or attached to this Proof of Claim was/were mine or my company's during the period between September 1, 2012, through January 1, 2013.

---

Signature \_\_\_\_\_ Date \_\_\_\_\_

**3. You Must Return this Claim Form by [120 days], 2019:**

(a) Fax this Claim Form to: X-XXX-XXX-XXXX

**OR**

(b) Mail this Claim Form to: <address>

**OR**

(c) Submit this Claim Form electronically at: <website>

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,

Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12,

Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

Referred to Magistrate Judge Joel Schneider

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

The Court having held a Final Approval Hearing on \_\_\_\_\_, notice of the hearing having been duly given in accordance with this Court's Order (1) Conditionally Certifying a Settlement Class, (2) Preliminarily Approving Class Action Settlement, (3) Approving Notice Plan and (4) Setting Final Approval Hearing (the "Preliminary Approval Order"), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and good cause appearing therefore,

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and Release dated \_\_\_\_\_, 2018, including its Exhibits (the "Agreement"), and the definition of words and terms contained therein, are incorporated by reference and are used hereafter. The terms and definitions of this Court's Preliminary Approval Order (Dkt. No. \_\_) are also incorporated by reference in this Final Approval Order.

2. This Court has jurisdiction over the subject matter of the Action and over the Parties, including all Settlement Class Members with respect to the Settlement Class certified for settlement purposes in this Court's Preliminary Approval Order, as follows:

**SETTLEMENT CLASS:** All persons in the United States that were sent a facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, transmitted by Creditsmarts on or after September 1, 2012, through January 1, 2013.

Excluded from the Settlement Class are: (1) the BMW Defendants, Creditsmarts, any parent, subsidiary, affiliate, or controlled person of the BMW Defendants or Creditsmarts, as well as their attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons; (2) the named

counsel in the Action and any employee of their office or firm; (3) the district and magistrate judges assigned to this Action, including their courtroom staff; (4) anyone whose claim against the Released Parties has been resolved through prior litigation; and (5) all persons who timely and validly request exclusion from the Settlement Class.

3. For purposes of settlement, Plaintiff is hereby appointed the “Class Representative.”

4. For purposes of settlement, the attorneys at Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C. are hereby appointed as Class Counsel.

5. The Court hereby finds that the Settlement is the product of arm’s-length settlement negotiations between Plaintiff and the BMW Defendants.

6. Upon the Declaration of \_\_\_\_\_, the Court hereby finds and concludes that Class Notice was disseminated to members of the Settlement Class in accordance with the terms of the Agreement and that the Class Notice and its dissemination complied with the Agreement and this Court’s Preliminary Approval Order.

7. The Court further finds and concludes that the Class Notice set forth in the Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, was the best notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who could be identified through reasonable effort and support the Court’s exercise of jurisdiction over the Settlement Class as contemplated in the Agreement and this Final Approval Order.

8. Upon the Declaration of \_\_\_\_\_, the Court finds that notice has been given to the appropriate State and Federal officials in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715.

9. \_\_\_\_\_ objections were received. All objections are overruled.

10. The following persons requested exclusion from the Settlement Class and the settlement and are hereby excluded: \_\_\_\_\_.

11. After due consideration of, among other things, the uncertainty about the likelihood of: (a) the Class's ultimate success on the merits; (b) the range of the Class's possible recovery; (c) the complexity, expense and duration of the litigation; (d) the substance and amount of opposition to the settlement; (e) the state of proceedings at which the settlement was achieved; (f) all written submissions, declarations and arguments of counsel; and (g) after notice and hearing, this Court finds that the settlement is fair, adequate and reasonable. This Court also finds that the financial settlement terms fall within the range of settlement terms that would be considered fair, adequate and reasonable.

Accordingly, the Court hereby finally approves the Settlement and finds that the terms constitute, in all respects, a fair, reasonable and adequate settlement as to all Settlement Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure.

12. The Court hereby finally certifies the Settlement Class for settlement purposes. The Court finds for settlement purposes that the Action satisfies all the requirements of Rule 23 of the Federal Rules of Civil Procedure.

13. The Court hereby approves the plan of distribution of the Settlement Awards as set forth in the Agreement. The Settlement Administrator is hereby ordered to comply with the terms of the Agreement with respect to distribution of Settlement Awards. Should any residual amount of uncashed checks be insufficient to conduct the Second Distribution, or any residual amount remain

after the Second Distribution, the Court hereby approves Legal Services of New Jersey as the *cy pres* recipient.

14. This Court hereby dismisses this Action, with prejudice, without costs to any Party, except as expressly provided for in the Agreement.

15. As of the Effective Date, Plaintiff and each and every one of the Settlement Class Members unconditionally, fully and finally release and forever discharge the Released Parties from the Released Claims. In addition, any rights of Plaintiff and each and every one of the Settlement Class Members to the protections afforded under Section 1542 of the California Civil Code and/or any other similar, comparable or equivalent laws will be terminated.

16. Plaintiff and each and every Settlement Class Member, and any person actually or purportedly acting on behalf of Plaintiff or any Settlement Class Member, are hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral or other forum, against the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the Agreement, this Final Approval Order and this Court's authority to effectuate the Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

17. The Agreement (including any and all exhibits attached thereto) and any and all negotiations, documents, and discussions associated with it will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by the BMW Defendants, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for

purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, the Preliminary Approval Order and/or this Final Approval Order.

18. If for any reason whatsoever this Settlement fails to become effective, the certification of the Settlement Class shall be void and the Parties and the Action will return to the *status quo* as it existed prior to the Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion seeking class certification, any motion seeking to compel arbitration or otherwise asserted at any other stage of the Action or in any other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, the BMW Defendants or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

19. In the event that any provision of the Agreement or this Final Approval Order is asserted by the BMW Defendants as a defense in whole or in part to any claim, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action or proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to

protect the Agreement, this Final Approval Order and this Court's authority to effectuate the Agreement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

20. By incorporating the Agreement and its terms herein, the Court determines that this Final Approval Order complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

21. The Court approves payment of attorneys' fees and costs to Class Counsel in the amount of \$1,250,000 in fees and \$\_\_\_\_\_ in litigation costs. These amounts shall be paid by the BMW Defendants pursuant to the terms of the Agreement. The Court finds these amounts to be appropriate and reasonable in light of the work performed by Class Counsel and the benefits to the Settlement Class Members. Those amounts shall be paid by the BMW Defendants pursuant to the terms of the Agreement.

22. The Court approves payment of a service award to Plaintiff in the amount of \$15,000. This amount shall be paid by the BMW Defendants pursuant to the terms of the Agreement.

23. The Court retains jurisdiction for 180 days over this action, Plaintiff, all members of the Settlement Class, and Defendants to determine all matters relating in any way to this Final Approval Order, the Preliminary Approval Order, or the Settlement Agreement, including but not limited to, their administration, implementation, interpretation or enforcement. The Court further retains jurisdiction to enforce this Order.

24. The Court finds that there is no just reason to delay the enforcement of this Final Approval Order.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

---

Honorable Noel L. Hillman  
United States District Judge

# **EXHIBIT D-1**

**This is a notice of a lawsuit settlement.**

**It should be read by a person who makes legal decisions for your home or business.**

**You may benefit from this. Please read it carefully.**

**You must submit a Proof of Claim (attached) to receive a settlement check.**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,  
Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC,  
CREDITSMARTS CORP., and JOHN DOES 1-12,  
Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

**You may be entitled to money under a class action settlement alleging unsolicited advertisements were sent by facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, on or after September 1, 2012, through January 1, 2013. The Court ordered us to send this notice to your fax number because it was found in a database to which the faxes at issue were sent and, therefore, you might be a member of the Settlement Class. If you received this Notice by mail, then your name and address was in the database. A person who does not exclude him or herself is a “Settlement Class Member.”**

**The purpose of this Notice is to inform the Settlement Class of the terms of the settlement and important deadlines relating to the settlement, as summarized below and described more fully on the Settlement Website: <website>**

Plaintiff City Select Auto Sales, Inc. (“Plaintiff”) claims that BMW Bank of North America, BMW Financial Services NA, LLC (together the “BMW Defendants”), and Creditsmarts Corp. violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending unsolicited advertisements by facsimile. The BMW Defendants deny these allegations and deny any claim of wrongdoing. The Court has not ruled on the merits of Plaintiff’s claims or the BMW Defendants’ defenses. The parties have agreed to settle. By entering into the settlement, the BMW Defendants have not conceded the truth or validity of any of the claims.

**REPRESENTATION OF THE SETTLEMENT CLASS**

Plaintiff is the “Class Representative.” The Court appointed Plaintiff’s attorneys, Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C as “Class Counsel.”

**TERMS OF THE SETTLEMENT**

The BMW Defendants will pay up to \$3,765,000 (the “Settlement Amount”) to cover all amounts related to the settlement, including settlement awards to Settlement Class Members, attorneys’ fees and costs to Class Counsel, a service award to Plaintiff, and the costs of notice and administration of the settlement. **A Settlement Class Member who submits a valid claim form (“Claim Form”) will receive a cash award of the lesser of \$145 per fax number on the class list or a pro rata share of the Settlement Amount remaining after the payments for fees, costs, service award, and notice and administration.** Class Counsel will ask the Court for 33.2% of the Settlement Amount as fees and additional money to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement. The attorneys have litigated this matter on a contingency basis. You will not have to pay any money to Class Counsel. You may enter an appearance through an attorney to be paid at your own cost if you desire.

**DEADLINES UNDER THE SETTLEMENT**

- Submit a Claim Form and W-9 Form. In order to receive benefits under the settlement, you must submit a valid Claim Form no later than Month XX, 20XX.** Claim Forms may be obtained on the Settlement Website, <website>, or by calling the Toll-Free Settlement Hotline, X-XXX-XXX-XXXX. Claim Forms must be submitted by

fax, mail, or through the Settlement Website. Settlement Class Members may only submit one claim per facsimile telephone number, regardless of the number of facsimiles the Settlement Class Member received. More details can be found on the Settlement Website.

- **Exclude Yourself.** To exclude yourself from the settlement, submit a written exclusion request postmarked on or before **Month XX, 20XX** to the Claims Administrator at **<address>**. To be valid, the written exclusion request must contain: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number(s) owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) the Settlement Class Member's signature. Exclusion requests must be signed by a representative of the Settlement Class Member who is authorized to request the exclusion. If you do not submit a valid and timely exclusion request, you will be bound by the terms of the settlement and you will give up your right to sue regarding unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Object.** To object to or comment on the settlement, you must file an objection with the Court by **Month XX, 20XX**. You must also serve copies of your objection on Class Counsel and Defendants' attorneys (at the addresses above), postmarked by the same date. Your objection must include your name, fax number, street address, all attorneys who assisted you in the preparation and filing of your objection, a list of all other class action cases in which you or your counsel have filed objections to settlements, and a statement of the reasons why you believe the Court should find that the proposed settlement is not fair, reasonable, and adequate. It is not enough to state only that you object; you must state the reasons why you believe the settlement should not be approved. Additionally, you must appear at the final fairness hearing to articulate your position why the settlement should not be approved. Even if you submit a valid and timely objection, to benefit from this settlement you must complete a Claim Form.
- **Do Nothing.** If you do nothing, you will not receive any monetary award and you will lose the right to sue regarding any unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Final Approval Hearing.** **The Final Approval Hearing will take place on Month XX, 20XX at XX:00 a.m./p.m.** in Courtroom 3A at the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New Jersey 08101.

#### INQUIRIES

Complete details about your rights and options are available on the Settlement Website, **<website>**. If you have other questions, you may call the Toll-Free Settlement Hotline, **X-XXX-XXX-XXXX**. You may also call attorney Phillip A. Bock, one of the lawyers for the Class, at **312-658-5501**.

Please do not contact the Clerk of the Court, the Judge, or the Judge's staff, the BMW Defendants, or the BMW Defendants' Counsel, because they cannot answer your questions or give you advice about this settlement.

BY ORDER OF THE COURT  
HONORABLE NOEL HILLMAN

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
**United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS**

**Settlement Administrator**

PO Box [REDACTED]  
[REDACTED]

Toll Free Number: **X-XXX-XXX-XXXX**

Website: **www.[REDACTED].com**

**CLAIM FORM**

**YOUR CLAIM FORM MUST BE RETURNED BY **MONTH XX, 20XX**, 2019.**

Fax Number: **<populated by administrator>**

*You do not need to possess or remember receiving any fax from Defendants, but you must complete all **FOUR** of the following steps to claim a settlement award:*

**1. You must provide your contact information.**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

List All Fax Numbers Belonging to You Between September 1, 2012 and January 1, 2013:

**2. You must certify your Taxpayer Identification Number.**

Please provide the Taxpayer Identification Number (“TIN”) associated with the owner of the fax number identified in No. 1 above. If the owner of the fax number is a business or other entity, then please enter its Employer Identification Number and do not provide a Social Security number. If the owner of the fax number is an individual, then please enter his or her Social Security Number and do not provide an Employer Identification Number. Don’t worry. The Court has ordered the Settlement Administrator to protect the confidentiality of your Social Security Number or Employer Identification Number.

Employer Identification Number						
		-				

OR

Social Security Number									
		-			-				

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**3. You must verify ownership or use of the fax number(s) you identified above.**

The fax number(s) identified in No. 1 above or attached to this Proof of Claim was/were mine or my company’s during the period between September 1, 2012, through January 1, 2013.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

4. **You Must Return this Claim Form by [120 days] , 2019:**

- (a) Fax this Claim Form to: **X-XXX-XXX-XXXX**  
**OR**
- (b) Mail this Claim Form to: **<address>**  
**OR**
- (c) Submit this Claim Form electronically at: **<website>**

## **EXHIBIT D-2**

**This is a notice of a lawsuit settlement.**

**It should be read by a person who makes legal decisions for your home or business.**

**You may benefit from this. Please read it carefully.**

**You must submit a Proof of Claim (attached) to receive a settlement check.**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,  
Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC,  
CREDITSMARTS CORP., and JOHN DOES 1-12,  
Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

**You may be entitled to money under a class action settlement alleging unsolicited advertisements were sent by facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, on or after September 1, 2012, through January 1, 2013. The Court ordered us to send this notice to your fax number because it was found in a database to which the faxes at issue were sent and, therefore, you might be a member of the Settlement Class. If you received this Notice by mail, then your name and address was in the database. A person who does not exclude him or herself is a “Settlement Class Member.”**

**The purpose of this Notice is to inform the Settlement Class of the terms of the settlement and important deadlines relating to the settlement, as summarized below and described more fully on the Settlement Website: <website>**

Plaintiff City Select Auto Sales, Inc. (“Plaintiff”) claims that BMW Bank of North America, BMW Financial Services NA, LLC (together the “BMW Defendants”), and Creditsmarts Corp. violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending unsolicited advertisements by facsimile. The BMW Defendants deny these allegations and deny any claim of wrongdoing. The Court has not ruled on the merits of Plaintiff’s claims or the BMW Defendants’ defenses. The parties have agreed to settle. By entering into the settlement, the BMW Defendants have not conceded the truth or validity of any of the claims.

**REPRESENTATION OF THE SETTLEMENT CLASS**

Plaintiff is the “Class Representative.” The Court appointed Plaintiff’s attorneys, Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C as “Class Counsel.”

**TERMS OF THE SETTLEMENT**

The BMW Defendants will pay up to \$3,765,000 (the “Settlement Amount”) to cover all amounts related to the settlement, including settlement awards to Settlement Class Members, attorneys’ fees and costs to Class Counsel, a service award to Plaintiff, and the costs of notice and administration of the settlement. **A Settlement Class Member who submits a valid claim form (“Claim Form”) will receive a cash award of the lesser of \$145 per fax number on the class list or a pro rata share of the Settlement Amount remaining after the payments for fees, costs, service award, and notice and administration.** Class Counsel will ask the Court for 33.2% of the Settlement Amount as fees and additional money to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement. The attorneys have litigated this matter on a contingency basis. You will not have to pay any money to Class Counsel. You may enter an appearance through an attorney to be paid at your own cost if you desire.

**DEADLINES UNDER THE SETTLEMENT**

- Submit a Claim Form. In order to receive benefits under the settlement, you must submit a valid Claim Form no later than Month XX, 20XX.** Claim Forms may be obtained on the Settlement Website, <website>, or by calling the Toll-Free Settlement Hotline, **X-XXX-XXX-XXXX**. Claim Forms must be submitted by fax, mail, or through the Settlement Website. Settlement Class Members may only submit one claim per facsimile telephone number,

regardless of the number of facsimiles the Settlement Class Member received. More details can be found on the Settlement Website.

- **Exclude Yourself.** To exclude yourself from the settlement, submit a written exclusion request postmarked on or before **Month XX, 20XX** to the Claims Administrator at **<address>**. To be valid, the written exclusion request must contain: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number(s) owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) the Settlement Class Member's signature. Exclusion requests must be signed by a representative of the Settlement Class Member who is authorized to request the exclusion. If you do not submit a valid and timely exclusion request, you will be bound by the terms of the settlement and you will give up your right to sue regarding unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Object.** To object to or comment on the settlement, you must file an objection with the Court by **Month XX, 20XX**. You must also serve copies of your objection on Class Counsel and Defendants' attorneys (at the addresses above), postmarked by the same date. Your objection must include your name, fax number, street address, all attorneys who assisted you in the preparation and filing of your objection, a list of all other class action cases in which you or your counsel have filed objections to settlements, and a statement of the reasons why you believe the Court should find that the proposed settlement is not fair, reasonable, and adequate. It is not enough to state only that you object; you must state the reasons why you believe the settlement should not be approved. Additionally, you must appear at the final fairness hearing to articulate your position why the settlement should not be approved. Even if you submit a valid and timely objection, to benefit from this settlement you must complete a Claim Form.
- **Do Nothing.** If you do nothing, you will not receive any monetary award and you will lose the right to sue regarding any unsolicited facsimiles transmitted to you by the BMW Defendants or Creditsmarts Corp.
- **Final Approval Hearing.** The Final Approval Hearing will take place on **Month XX, 20XX at XX:00 a.m./p.m.** in Courtroom 3A at the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New Jersey 08101.

#### INQUIRIES

Complete details about your rights and options are available on the Settlement Website, **<website>**. If you have other questions, you may call the Toll-Free Settlement Hotline, **X-XXX-XXX-XXXX**. You may also call attorney Phillip A. Bock, one of the lawyers for the Class, at **312-658-5501**.

Please do not contact the Clerk of the Court, the Judge, or the Judge's staff, the BMW Defendants, or the BMW Defendants' Counsel, because they cannot answer your questions or give you advice about this settlement.

BY ORDER OF THE COURT  
HONORABLE NOEL HILLMAN

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS

**Settlement Administrator**

PO Box [REDACTED]  
[REDACTED]

Toll Free Number: **X-XXX-XXX-XXXX**

Website: **www.[REDACTED].com**

**CLAIM FORM**

**YOUR CLAIM FORM MUST BE RETURNED BY **MONTH XX, 20XX**, 2019.**

Fax Number: <populated by administrator>

*You do not need to possess or remember receiving any fax from Defendants, but you must complete all **THREE** of the following steps to claim a settlement award:*

**1. You must provide your contact information.**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

List All Fax Numbers Belonging to You Between September 1, 2012 and January 1, 2013:

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**2. You must verify ownership or use of the fax number(s) you identified above.**

The fax number(s) identified in No. 1 above or attached to this Proof of Claim was/were mine or my company's during the period between September 1, 2012, through January 1, 2013.

---

Signature \_\_\_\_\_ Date \_\_\_\_\_

**3. You Must Return this Claim Form by **[120 days]**, 2019:**

(a) Fax this Claim Form to: **X-XXX-XXX-XXXX**

**OR**

(b) Mail this Claim Form to: <address>

**OR**

(c) Submit this Claim Form electronically at: <website>

# **EXHIBIT E-1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,

Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12,

Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

Referred to Magistrate Judge Joel Schneider

**[PROPOSED] ORDER (1)  
CONDITIONALLY  
CERTIFYING A  
SETTLEMENT CLASS, (2)  
PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT, (3)  
APPROVING NOTICE PLAN,  
AND (4) SETTING FINAL  
APPROVAL HEARING**

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class in the case entitled City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al., United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS (the "Action"). The Action was brought by plaintiff City Select Auto Sales, Inc. ("Plaintiff"), on behalf of itself and all others similarly situated, against defendants BMW Bank of North America and BMW Financial Services NA, LLC (together, the "BMW Defendants" and together, with Plaintiff, the "Parties") and Creditsmarts Corp. Based on this Court's review of the Parties' Settlement Agreement and Release (the "Agreement"), Plaintiff's Motion for Preliminary Approval of Settlement, the BMW Defendants' Opposition to the Motion, Plaintiff's Reply, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.
2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Parties, and all members of the Settlement Class.
3. Scope of Settlement. The Agreement resolves all claims alleged in the Class Action Complaint filed in the Action on July 30, 2013. See Dkt. No. 1.

4. Preliminary Approval of Proposed Settlement. The Court has conducted a preliminary evaluation of the proposed settlement (“Settlement”) as set forth in the Agreement. Pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure, in light of the factual, legal, practical, and procedural considerations raised by this case, the settlement of this action, as embodied in the terms of the Settlement Agreement attached to the Motion the Court finds that: (a) the Settlement is fair, reasonable and adequate, and within the range of possible approval; (b) the Settlement has been negotiated in good faith at arm’s length between experienced attorneys familiar with the legal and factual issues of this case; (c) with respect to the forms of notice of the material terms of the Settlement to persons in the Settlement Class for their consideration, that notice provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; and (d) with respect to the proposed notice plan, that the notice program constitutes the best notice practicable under the circumstances. Therefore, the Court grants preliminary approval of the Settlement.

5. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

All persons in the United States that were sent a facsimile advertising the goods or services of up2drive, BMW

Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, transmitted by Creditsmarts on or after September 1, 2012, through January 1, 2013.

Excluded from the Settlement Class are: (1) the BMW Defendants, Creditsmarts, any parent, subsidiary, affiliate, or controlled person of the BMW Defendants or Creditsmarts, as well as their attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons; (2) the named counsel in the Action and any employee of their office or firm; (3) the district and magistrate judges assigned to this Action, including their courtroom staff; (4) anyone whose claim against the Released Parties has been resolved through prior litigation; and (5) all persons who timely and validly request exclusion from the Settlement Class.

6. In connection with this conditional certification, the Court makes the following preliminary findings:
  - (a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;
  - (b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved;
  - (c) Plaintiff's claims appear to be typical of the claims being resolved through the Settlement;

(d) Plaintiff appears to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the Settlement;

(e) For purposes of determining whether the Settlement is fair, reasonable and adequate, common questions of law and fact appear to predominate over questions affecting only individual members of the Settlement Class. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) For purposes of the Settlement, certification of the Settlement Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Settlement Class.

7. Class Representative. The Court appoints the named Plaintiff to act as a representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Class Counsel. The Court appoints Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C. as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

9. Final Approval Hearing. At \_\_\_\_\_ .m. on \_\_\_\_\_, 2018, in Courtroom 3A of the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New

Jersey 08101, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement.

10. Settlement Administrator. The Court hereby appoints Class-settlement.com as the Settlement Administrator.

11. Class Notice. The Court approves the claim form proposed by the BMW Defendants and the proposed plan for giving notice to the Settlement Class directly (by facsimile and mail) and through establishment of a Settlement Website, as more fully described in Plaintiff's Motion and the Agreement ("Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than \_\_\_\_\_, 2018, which is fourteen (14) days after entry of this Order ("Notice Deadline").

12. The Settlement Administrator will file with the Court by no later than \_\_\_\_\_, 2018, which is fourteen (14) days prior to the Final Approval Hearing, proof that notice was provided in accordance with the Agreement and this Order.

13. Opt-Out and Objection Deadline. Persons in the Settlement Class who wish to either object to the Settlement or request exclusion from the Settlement Class must do so by \_\_\_\_\_, 2018, which is sixty (60) days after the Notice Deadline. Persons in the Settlement Class may not both object and opt-out. If a person both requests to opt-out and objects, the request to opt-out will control.

14. Exclusion from the Settlement Class. To request exclusion from the Settlement Class, a person in the Settlement Class must follow the directions in the Class Notice and send a compliant request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out and Objection Deadline. Exclusion requests must include: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) for mailed opt-out requests, the Settlement Class Member's signature, and for opt-out requests submitted via the Settlement Website, the Settlement Class Member's electronic signature. Exclusion requests must be signed by a representative of the Settlement

Class Member who is authorized to request the exclusion. No request for exclusion will be valid unless timely submitted and all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class. All Settlement Class Members who do not opt-out in accordance with the terms set forth herein will be bound by all determinations and judgments in the Action.

15. The Settlement Administrator will retain a copy of all requests for exclusion. Not later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator will file with the Court, if possible under seal, a declaration that lists all of the exclusion requests received.

16. If a timely and valid exclusion request is made by a person in the Settlement Class, then the Agreement and any determinations and judgments concerning the Settlement will not bind the excluded person. However, if a person in the Settlement Class submits both an exclusion request and a claim form, the claim form will control and the person will be considered a Settlement Class Member.

17. All Settlement Class Members who do not opt-out in accordance with the terms set forth herein will be bound by all determinations and judgments

concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

18. **Objections to the Settlement.** To object to the Settlement, Settlement Class Members must follow the directions below and in the Class Notice and file a written objection with the Court by the Opt-Out and Objection Deadline. Settlement Class Members also must mail the objection by the Opt-Out and Objection Deadline to each of the following: (i) Class Counsel –Bock, Hatch, Lewis & Oppenheim, LLC, 134 N. La Salle St., Ste. 1000, Chicago, Illinois 60602; and (ii) the BMW Defendants’ Counsel – Arjun P. Rao, Stroock & Stroock & Lavan LLP, 2029 Century Park East, Los Angeles, California 90067. In connection with an objection, the Settlement Class Member must: (i) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member; (ii) include a statement of such Settlement Class Member’s specific objections; (iii) state the grounds for objection, as well as identify any documents which such objector desires the Court to consider; and (iv) list all class actions in which the objector or its counsel have filed objections. The Court will not consider an objection unless the objection is filed with the Court, mailed to Class Counsel and the BMW Defendants’ Counsel, includes all of the foregoing information, and the objector attends the Final Approval Hearing personally or through counsel.

19. Any Settlement Class Member who fails to timely comply with Paragraph 18 will not be permitted to object to the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have waived his, her or its objections, and will be forever barred from making any objections in the Action or any other related action or proceeding.

20. Stay of Other Proceedings. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed.

21. Pending the final determination of whether the Settlement should be approved, Plaintiff and the Settlement Class are enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral or other forum, against any of the Released Parties. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated.

22. If for any reason whatsoever this Settlement is not finalized or the Settlement as detailed in the Agreement is not finally approved by the Court, the certification of the Settlement Class shall be void and the Parties and the Action will return to the *status quo* as it existed prior to the Agreement, and no doctrine of

waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion seeking class certification or otherwise asserted at any other stage of the Action or in any other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, any person in the proposed Settlement Class, the BMW Defendants or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

23. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by the BMW Defendants, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order and the Final Approval Order.

24. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor

changes to the form or content of the Class Notice and Claim Form and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Settlement Class.

25. Schedule of Future Events. Accordingly, the following are the deadlines by which certain events must occur:

_____, 2019 [14 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
_____, 2019 [120 days after the Notice Deadline]	Deadline for Settlement Class Members to Submit a Claim Form (Claim Period)
_____, 2019 [60 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Opt-Out and Objection Deadline)
_____, 2019 [14 Days Prior to Final Approval Hearing]	Deadline for Parties to file the following: <ol style="list-style-type: none"> <li>(1) List of persons who made timely and proper requests for exclusion (under seal);</li> <li>(2) Proof of Class Notice; and</li> <li>(3) Motion and memorandum in support of final approval, including responses to any objections.</li> </ol>
_____, 2019 at _____.m.	Final Approval Hearing

[No earlier than 90 days from the provision of CAFA notice and the Opt-Out and Objection Deadline, whichever is later]	
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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

Honorable Noel L. Hillman  
United States District Judge

## **EXHIBIT E-2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY – CAMDEN VICINAGE**

CITY SELECT AUTO SALES, INC., a new Jersey corporation, individually and as the representative of a class of similarly situated persons,

Plaintiff,

vs.

BMW BANK OF NORTH AMERICA, INC., BMW FINANCIAL SERVICES NA, LLC, CREDITSMARTS CORP., and JOHN DOES 1-12,

Defendants.

Case No. 13-cv-04595-NLH-JS

Assigned to the Hon. Noel L. Hillman

Referred to Magistrate Judge Joel Schneider

**[PROPOSED] ORDER (1)  
CONDITIONALLY  
CERTIFYING A  
SETTLEMENT CLASS, (2)  
PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT, (3)  
APPROVING NOTICE PLAN,  
AND (4) SETTING FINAL  
APPROVAL HEARING**

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class in the case entitled City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al., United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS (the "Action"). The Action was brought by plaintiff City Select Auto Sales, Inc. ("Plaintiff"), on behalf of itself and all others similarly situated, against defendants BMW Bank of North America and BMW Financial Services NA, LLC (together, the "BMW Defendants" and together, with Plaintiff, the "Parties") and Creditsmarts Corp. Based on this Court's review of the Parties' Settlement Agreement and Release (the "Agreement"), Plaintiff's Motion for Preliminary Approval of Settlement, the BMW Defendants' Opposition to the Motion, Plaintiff's Reply, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.
2. Jurisdiction. The Court has jurisdiction over the subject matter of the Action, the Parties, and all members of the Settlement Class.
3. Scope of Settlement. The Agreement resolves all claims alleged in the Class Action Complaint filed in the Action on July 30, 2013. See Dkt. No. 1.

4. Preliminary Approval of Proposed Settlement. The Court has conducted a preliminary evaluation of the proposed settlement (“Settlement”) as set forth in the Agreement. Pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure, in light of the factual, legal, practical, and procedural considerations raised by this case, the settlement of this action, as embodied in the terms of the Settlement Agreement attached to the Motion the Court finds that: (a) the Settlement is fair, reasonable and adequate, and within the range of possible approval; (b) the Settlement has been negotiated in good faith at arm’s length between experienced attorneys familiar with the legal and factual issues of this case; (c) with respect to the forms of notice of the material terms of the Settlement to persons in the Settlement Class for their consideration, that notice provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; and (d) with respect to the proposed notice plan, that the notice program constitutes the best notice practicable under the circumstances. Therefore, the Court grants preliminary approval of the Settlement.

5. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

All persons in the United States that were sent a facsimile advertising the goods or services of up2drive, BMW

Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, transmitted by Creditsmarts on or after September 1, 2012, through January 1, 2013.

Excluded from the Settlement Class are: (1) the BMW Defendants, Creditsmarts, any parent, subsidiary, affiliate, or controlled person of the BMW Defendants or Creditsmarts, as well as their attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons; (2) the named counsel in the Action and any employee of their office or firm; (3) the district and magistrate judges assigned to this Action, including their courtroom staff; (4) anyone whose claim against the Released Parties has been resolved through prior litigation; and (5) all persons who timely and validly request exclusion from the Settlement Class.

6. In connection with this conditional certification, the Court makes the following preliminary findings:
  - (a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;
  - (b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved;
  - (c) Plaintiff's claims appear to be typical of the claims being resolved through the Settlement;

(d) Plaintiff appears to be capable of fairly and adequately protecting the interests of all members of the Settlement Class in connection with the Settlement;

(e) For purposes of determining whether the Settlement is fair, reasonable and adequate, common questions of law and fact appear to predominate over questions affecting only individual members of the Settlement Class. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) For purposes of the Settlement, certification of the Settlement Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Settlement Class.

7. Class Representative. The Court appoints the named Plaintiff to act as a representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Class Counsel. The Court appoints Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C. as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

9. Final Approval Hearing. At \_\_\_\_\_ .m. on \_\_\_\_\_, 2018, in Courtroom 3A of the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New

Jersey 08101, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement.

10. Settlement Administrator. The Court hereby appoints Class-settlement.com as the Settlement Administrator.

11. Class Notice. The Court approves the claim form proposed by Plaintiff and the proposed plan for giving notice to the Settlement Class directly (by facsimile and mail) and through establishment of a Settlement Website, as more fully described in Plaintiff's Motion and the Agreement ("Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than \_\_\_\_\_, 2018, which is fourteen (14) days after entry of this Order ("Notice Deadline").

12. The Settlement Administrator will file with the Court by no later than \_\_\_\_\_, 2018, which is fourteen (14) days prior to the Final Approval Hearing, proof that notice was provided in accordance with the Agreement and this Order.

13. Opt-Out and Objection Deadline. Persons in the Settlement Class who wish to either object to the Settlement or request exclusion from the Settlement Class must do so by \_\_\_\_\_, 2018, which is sixty (60) days after the Notice Deadline. Persons in the Settlement Class may not both object and opt-out. If a person both requests to opt-out and objects, the request to opt-out will control.

14. Exclusion from the Settlement Class. To request exclusion from the Settlement Class, a person in the Settlement Class must follow the directions in the Class Notice and send a compliant request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out and Objection Deadline. Exclusion requests must include: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) for mailed opt-out requests, the Settlement Class Member's signature, and for opt-out requests submitted via the Settlement Website, the Settlement Class Member's electronic signature. Exclusion requests must be signed by a representative of the Settlement

Class Member who is authorized to request the exclusion. No request for exclusion will be valid unless timely submitted and all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class. All Settlement Class Members who do not opt-out in accordance with the terms set forth herein will be bound by all determinations and judgments in the Action.

15. The Settlement Administrator will retain a copy of all requests for exclusion. Not later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator will file with the Court, if possible under seal, a declaration that lists all of the exclusion requests received.

16. If a timely and valid exclusion request is made by a person in the Settlement Class, then the Agreement and any determinations and judgments concerning the Settlement will not bind the excluded person. However, if a person in the Settlement Class submits both an exclusion request and a claim form, the claim form will control and the person will be considered a Settlement Class Member.

17. All Settlement Class Members who do not opt-out in accordance with the terms set forth herein will be bound by all determinations and judgments

concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

18. **Objections to the Settlement.** To object to the Settlement, Settlement Class Members must follow the directions below and in the Class Notice and file a written objection with the Court by the Opt-Out and Objection Deadline. Settlement Class Members also must mail the objection by the Opt-Out and Objection Deadline to each of the following: (i) Class Counsel –Bock, Hatch, Lewis & Oppenheim, LLC, 134 N. La Salle St., Ste. 1000, Chicago, Illinois 60602; and (ii) the BMW Defendants’ Counsel – Arjun P. Rao, Stroock & Stroock & Lavan LLP, 2029 Century Park East, Los Angeles, California 90067. In connection with an objection, the Settlement Class Member must: (i) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member; (ii) include a statement of such Settlement Class Member’s specific objections; (iii) state the grounds for objection, as well as identify any documents which such objector desires the Court to consider; and (iv) list all class actions in which the objector or its counsel have filed objections. The Court will not consider an objection unless the objection is filed with the Court, mailed to Class Counsel and the BMW Defendants’ Counsel, includes all of the foregoing information, and the objector attends the Final Approval Hearing personally or through counsel.

19. Any Settlement Class Member who fails to timely comply with Paragraph 18 will not be permitted to object to the Settlement at the Final Approval Hearing, will be foreclosed from seeking any review of the Settlement by appeal or other means, will be deemed to have waived his, her or its objections, and will be forever barred from making any objections in the Action or any other related action or proceeding.

20. Stay of Other Proceedings. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed.

21. Pending the final determination of whether the Settlement should be approved, Plaintiff and the Settlement Class are enjoined from commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative, arbitral or other forum, against any of the Released Parties. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated.

22. If for any reason whatsoever this Settlement is not finalized or the Settlement as detailed in the Agreement is not finally approved by the Court, the certification of the Settlement Class shall be void and the Parties and the Action will return to the *status quo* as it existed prior to the Agreement, and no doctrine of

waiver, estoppel or preclusion will be asserted in any proceedings, in response to any motion seeking class certification or otherwise asserted at any other stage of the Action or in any other proceeding. No agreements, documents or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiff, any person in the proposed Settlement Class, the BMW Defendants or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the Action or in any other proceeding.

23. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by the BMW Defendants, or the truth of any of the claims. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the Agreement, this Order and the Final Approval Order.

24. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor

changes to the form or content of the Class Notice and Claim Form and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Settlement Class.

25. Schedule of Future Events. Accordingly, the following are the deadlines by which certain events must occur:

_____, 2019 [14 days after the date of this Order]	Deadline for notice to be provided in accordance with the Agreement and this Order (Notice Deadline)
_____, 2019 [120 days after the Notice Deadline]	Deadline for Settlement Class Members to Submit a Claim Form (Claim Period)
_____, 2019 [60 days after the Notice Deadline]	Deadline to file objections or submit requests for exclusion (Opt-Out and Objection Deadline)
_____, 2019 [14 Days Prior to Final Approval Hearing]	Deadline for Parties to file the following: <ol style="list-style-type: none"> <li>(1) List of persons who made timely and proper requests for exclusion (under seal);</li> <li>(2) Proof of Class Notice; and</li> <li>(3) Motion and memorandum in support of final approval, including responses to any objections.</li> </ol>
_____, 2019 at _____.m.	Final Approval Hearing

[No earlier than 90 days from the provision of CAFA notice and the Opt-Out and Objection Deadline, whichever is later]	
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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

Honorable Noel L. Hillman  
United States District Judge

# EXHIBIT F

**City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al.**  
United States District Court for the District of New Jersey,  
Case No. 1:13-cv-04595-NLH-JS

**If you received one or more unsolicited facsimiles advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, on or after September 1, 2012, through January 1, 2013, you may be entitled to money in a class action settlement. You do not need to remember receiving the facsimiles, or possess any copies, to make a claim in this settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- A proposed settlement will provide a cash award to eligible persons who file claims. The cash awards are estimated to be approximately \$145 per claim.
- The settlement fully resolves a lawsuit involving allegations that BMW Bank of North America and BMW Financial Services NA, LLC (together the “BMW Defendants”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) by sending advertisements by facsimile without the recipients’ prior express invitation or permission and without a required opt-out notice.
- You are in the “Settlement Class” if you were sent a facsimile advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC, transmitted by Creditsmarts Corp. (“Creditsmarts”) on or after September 1, 2012, through January 1, 2013. A person who does not exclude himself, herself, or itself is a “Settlement Class Member.” You do not need to remember receiving any facsimile, and you do not need to possess any copies to file a claim.
- The BMW Defendants deny all allegations and deny any claim of wrongdoing. The Court has not ruled on the merits of plaintiff City Select Auto Sales, Inc.’s (“Plaintiff”) claims or the BMW Defendants’ defenses. By entering into the settlement, the BMW Defendants have not conceded the truth or validity of any of the claims against them.
- The BMW Defendants will pay up to \$3,765,000 (the “Settlement Amount”) to cover all amounts related to the settlement, including settlement awards to Settlement Class Members, attorneys’ fees and costs to attorneys representing Plaintiff and the Settlement Class (“Class Counsel”), any service award to Plaintiff, and the costs of notice and administration of the settlement.
- Class Counsel will ask the Court for 33.2% of the Settlement Amount as fees and additional money to reimburse them for the out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement.
- Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM BY MONTH XX, 20XX</b>	This is the only way to receive a payment. You will give up your rights to sue the BMW Defendants about the legal claims in this case whether or not you submit a claim form.
<b>EXCLUDE YOURSELF BY MONTH XX, 20XX</b>	Get no payment. This is the only option that allows you to ever sue BMW Defendants on your own regarding the legal claims in this case.
<b>OBJECT BY MONTH XX, 20XX</b>	Write to the Court about why you believe the settlement is unfair in any respect. Even if you file a valid and timely objection, you must still submit a claim form to receive a payment.
<b>ATTEND A HEARING ON MONTH XX, 20XX</b>	Speak in Court about the fairness of the settlement or to have your objection heard.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Settlement award payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

#### BASIC INFORMATION

##### 1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed settlement has been reached in the putative class action lawsuit entitled City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al., United States District Court for the District of New Jersey, Case No. 1:13-cv-04595-NLH-JS (the “Action”). Because your rights may be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

##### 2. What does it mean if I received a fax or a mailing about this settlement?

If you received a fax or mailing describing this settlement, you might be a member of the Settlement Class, which was derived from a list of fax numbers that may have received a fax between September 1, 2012 and January 1, 2013 advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, LLC.

### 3. What is this class action lawsuit about?

In a class action, one or more people called a Class Representative (here, Plaintiff) sues on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff claims the BMW Defendants and Creditsmarts violated the TCPA, by sending unsolicited facsimile advertisements without recipients' prior express invitation or permission and without a required opt-out notice.

The BMW Defendants deny these allegations and deny any claim of wrongdoing. The Court has not ruled on the merits of Plaintiff's claims or the BMW Defendants' defenses. By entering into the settlement, the BMW Defendants have not conceded the truth or validity of any of the claims against it.

The Court has conditionally certified a class action for settlement purposes only. The Honorable Noel L. Hillman (the "Court") is presiding over this action.

### 4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or the BMW Defendants. Instead, both sides agreed to this settlement. That way, they avoid the risk and cost of a trial, and the Settlement Class Members are eligible to receive compensation. Plaintiff and Class Counsel think the settlement is best for all persons in the Settlement Class.

## WHO IS IN THE SETTLEMENT CLASS?

### 5. How do I know if I am a part of the settlement class?

The Court has certified a class action for settlement purposes only. You are in the Settlement Class if you were sent a fax advertising the goods or services of up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, or BMW of North America, transmitted by Creditsmarts on or after September 1, 2012, through January 1, 2013.

The Settlement Class does *not* include any persons who validly request exclusion from the Settlement Class, as described under Question 14. A person who does not exclude him or herself is a "Settlement Class Member."

If you are still not sure whether you are included in the Settlement Class, you can visit other sections of the Settlement Website, [www.XXX.com](http://www.XXX.com), you may write to the Settlement Administrator at \_\_\_\_\_, or you may call the Toll-Free Settlement Hotline, 1-[XXX-XXX-XXXX](tel:1XXX-XXX-XXXX), for more information.

## THE LAWYERS REPRESENTING YOU

## **6. Do I have lawyers in this case?**

The Court has appointed the law firms of Bock, Hatch, Lewis & Oppenheim, LLC and Sherman, Silverstein, Kohl, Rose & Podolsky, P.C. as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

## **7. How will Class Counsel and Plaintiff be paid?**

Class Counsel will ask the Court to approve payment of up to \$1,250,000 to them for attorneys' fees from the Settlement Amount. You will not have to pay any money to Class Counsel. This amounts to 33.2% of the \$3,765,000 Settlement Amount. Class Counsel will also ask the Court to approve payment of their out-of-pocket expenses so long as the settlement administration costs and expenses do not collectively exceed \$80,000. This payment would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel also will ask the Court to approve payment of \$15,000 to the named Plaintiff for its efforts in bringing the lawsuit and representing the Settlement Class. The Court may award less than these amounts.

## **THE SETTLEMENT BENEFITS**

## **8. What does the settlement provide?**

The BMW Defendants will pay up to \$3,765,000 to cover the costs of settlement, including payment of: (i) cash awards to Settlement Class Members who submit a valid and timely claim form; (ii) an award of attorneys' fees to Class Counsel and Class Counsel's out-of-pocket expenses as approved by the Court; (iii) a service award to Plaintiff of \$15,000, as approved by the Court; and (iv) payment of up to \$80,000 for settlement administration costs.

## **9. How much will my settlement award be?**

Your award will be \$145 per fax number on the class list unless the total award payments would cause total payments related to the Settlement to exceed the Settlement Amount, in which case your award will be reduced pro rata so that the total payments equal the Settlement Amount.

## **10. What am I giving up to stay in the Settlement Class?**

Unless you exclude yourself from the settlement, you will be part of the Settlement Class, and you will be bound by the release of claims in the settlement. This means that, if the settlement is approved, you cannot sue, continue to sue, or be part of any other lawsuit against the BMW Defendants or any other released parties asserting a Released Claim. It also means that all of the Court's orders will apply to you and legally bind you.

Unless you opt out of the settlement, you will agree to release the BMW Defendants and any other released parties from any and all claims that arise from the telemarketing calls at issue in this action. The release provides:

Plaintiff and each and all Settlement Class Members, on behalf of themselves and their present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, and/or predecessors in interest and all of the aforementioned's respective officers, directors, employees, attorneys, shareholders, agents, vendors and assigns and, in the case of individual Settlement Class Members, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, household members, and any persons acting on their behalf, will be deemed to have fully released and forever discharged up2drive, BMW Bank of North America, BMW Financial Services NA, LLC, BMW of North America, and Creditsmarts Corp. and each and all of their present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, vendors and assigns (together, the "Released Parties") from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by Constitution, statute, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory as of the date of Final Approval that arise out of or are related to the actual or alleged transmission by BMW Bank of North America, BMW Financial Services NA, LLC, BMW of North America, up2drive, Creditsmarts Corp., or their current or prior representatives, agents or affiliates, of facsimiles advertising the goods or services of BMW Bank of North America, BMW Financial Services NA, LLC, BMW of North America, and/or up2drive, including, but not limited to, claims under or for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any other state or federal statutory or analogous common law claim (including, but not limited to invasion of privacy and conversion) (the "Released Claims") during the Class Period.

If you have any questions about the release or what it means, you can speak to Class Counsel, listed under Question 6, for free, or you can, at your own expense, talk to your own lawyer. The release does not apply to persons in the Settlement Class who timely exclude themselves.

### HOW TO OBTAIN A SETTLEMENT AWARD

#### 11. How can I get a settlement award?

To qualify for a settlement award, you must send in a claim form by **Month XX, 20XX**. You may get a claim form on the Settlement Website, [www.XXX.com](http://www.XXX.com), or by calling the Toll-Free Settlement Hotline, **1-XXX-XXX-XXXX**. **Read the instructions carefully, fill out the claim form completely and accurately, sign it, and submit it.** To be valid, the claim form must be completed fully and accurately and submitted timely. A claim form may be submitted by mail to

the claims administrator at: [REDACTED] or via the Settlement Website. If you are submitting your claim via the Settlement Website, it must be submitted no later than Month XX, 20XX. If you are mailing your claim form to the claims administrator, it must be postmarked by Month XX, 20XX.

## WHEN WILL I RECEIVE MY SETTLEMENT AWARD?

### 12. When would I receive a settlement award?

The Court will hold a Final Approval Hearing on Month XX, 20XX to decide whether to approve the settlement. If the Court approves the settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone entitled to a settlement award will be informed of the progress of the settlement through information posted on the Settlement Website at [www.XXX.com](http://www.XXX.com). Please be patient.

### 13. Will my settlement award expire?

Yes. Settlement checks are only valid for 180 days after the date on the check. If you fail to cash the check within the 180-day time period, you will be deemed to have forever waived and released your claim for payment. Please act promptly.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 14. How do I get out of the settlement?

If you want to keep the right to sue or continue to sue the BMW Defendants or a Released Party arising out of a Released Claim, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

You may request exclusion from the Settlement by submitting an opt-out request through the Settlement Website or by sending a written request to the Settlement Administrator. Exclusion requests must contain: (i) the full name of the company or individual identified as a Settlement Class Member and that Settlement Class Member's address; (ii) the facsimile number(s) owned or used by the Settlement Class Member during the Class Period; (iii) the following statement: "I request to be excluded from the settlement in the City Select action and have authority to make this request" or a substantially similar statement that unambiguously communicates a desire to be excluded from the Settlement; and (iv) the Settlement Class Member's signature. Exclusion requests must be signed by the Settlement Class Member who is requesting exclusion or its authorized representative. No request for exclusion will be valid unless timely submitted and all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.

**If you are submitting your exclusion request via the Settlement Website, it must be submitted no later than Month XX, 20XX. If you are mailing your exclusion request to the claims administrator, it must be postmarked by Month XX, 20XX and mailed to the following address:**

Settlement Claims Administrator  
P.O. Box XXXXX  
City, State Zip Code

You cannot exclude yourself on the phone or by fax or email. If you ask to be excluded, you will not get any payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the BMW Defendants or a Released Party in the future.

#### **15. If I do not exclude myself, can I sue the BMW Defendants for the same thing later?**

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) the BMW Defendants or any Released Parties for the Released Claims that this settlement resolves. If you already have a lawsuit that may relate to the claims being released as part of this class settlement, you should speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is Month XX, 20XX.

#### **16. If I exclude myself, can I get a benefit from this settlement?**

No. If you ask to be excluded, you will not receive a settlement award and you cannot object to the settlement. However, in the event a member of the Settlement Class submits both an exclusion request and a claim form, the claim form will control.

### **OBJECTING TO THE SETTLEMENT**

#### **17. How do I tell the Court that I do not think the settlement is fair?**

If you are in the Settlement Class and do not exclude yourself, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a timely, written objection in the manner described below, you are deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement, including as to the award of any attorneys' fees and costs to Class Counsel and/or service award to Plaintiff.

To object, you must make your objection in writing, stating that you object to the settlement in City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al. You must make your objection in writing and file it with the Court. To be valid, the written objection must: (1) contain information sufficient to allow the Parties to confirm that you are a Settlement Class Member; (2) include a statement of your specific objections; (3) state the grounds for objection, as well as identify or attach any documents you would like the Court to consider; and (iv) list of all other class action cases in which you or your counsel have filed objections to settlements.

**To be considered, you must file your objections with the Court at the address below and also mail your objections to Counsel for Plaintiff and the BMW Defendants at the addresses below no later than Month XX, 20XX, and attend the Final Approval Hearing.**

City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al

Case No. 1:13-cv-04595-NLH-JS

Clerk of the Court

U.S. District Court for the District of New Jersey  
Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets, Room 1050  
Camden, New Jersey 08101

For Plaintiff:

BOCK, HATCH, LEWIS & OPPENHEIM, LLC  
Phillip A. Bock  
134 N. La Salle Street, Suite 1000  
Chicago, Illinois 60602

For the BMW Defendants:

STROOCK & STROOCK & LAVAN LLP  
Arjun P. Rao  
2029 Century Park East  
Los Angeles, California 90067

**18. What is the difference between objecting and excluding?**

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you both object and request to exclude yourself, the request to exclude yourself will control.

**IF YOU DO NOTHING**

**19. What happens if I do nothing at all?**

If you do nothing, you will not receive a settlement award and you will give up your rights to sue the BMW Defendants and/or any other Released Parties on a Released Claim. For more information relating to what rights you are giving up, see Question 10.

**THE FINAL APPROVAL HEARING**

**20. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Approval Hearing at        a.m./p.m. on Month, XX, 20XX at the U.S. District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, New Jersey 08101, in Courtroom 3A. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 17 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel as well as Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

## 21. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come or have your own lawyer appear at your own expense. If you send an objection, you must come to Court to talk about it if you want the Court to consider it.

## 22. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 17 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, you must say that it is your “Notice of Intention to Appear” in “City Select Auto Sales, Inc. v. BMW Bank of North America, Inc. et al., Case No. 1:13-cv-04595-NLH-JS.” The document must also include your name, address, telephone number, that you are a class member, and your signature. The document must be filed with the Court at the address in Question 17 no later than **Month XX, 20XX**. You cannot speak at the hearing if you exclude yourself from the settlement.

## GETTING MORE INFORMATION

### 23. How do I get more information?

This notice is only a summary of the proposed settlement. More details are in the settlement agreement. You may get a copy of the settlement agreement by visiting the Settlement Website, [www.XXX.com](http://www.XXX.com). You may also write to the address below, call the Toll-Free Settlement Hotline (1-XXX-XXX-XXXX), or contact Class Counsel at 312-658-5000 with any questions.

**PLEASE DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, THE BMW DEFENDANTS, OR THE BMW DEFENDANTS' COUNSEL ABOUT THE SETTLEMENT.**